REMARKS

Claims 24-28 were pending. The Examiner rejected claims 24-28 under 35 U.S.C §§ 102(b) and 103(a). Applicant has herein amended claims 24 and 26; cancelled claim 25; and added new claims 29-37. The claims as filed and the specification support the amended and new claims. For example, the amendment to claim 24 finds support in Example 1, pages 12-15. No new matter has been added. Accordingly, claims 24 and 26-37 are pending. In light of these amendments and the following remarks, Applicant respectfully requests reconsideration and allowance of claims 24 and 26-37.

Rejections under 35 U.S.C. § 102(b)

The Examiner rejected claims 24-26 under 35 U.S.C. 102(b) as being anticipated by Gooberman (<http://www.thehealthstore.net/en-us/p_2.html> (3/24/03) "Ultimate Joint Repair Formula," hereinafter Reference AW). Reference AW discloses a capsule having 375 mg of glucosamine sulfate and 105 mg of a "proprietary blend" of bromelain, boswellia serrata extract (40%), tumeric, and ginger. The Examiner also rejected claims 24-28 under 35 U.S.C. § 102(b) as being anticipated by Craig Kisciras (<http://www.rxvitamins.com/pets/nutriflex.asp (3/24/03) "Professional Veterinary Formulas: Nutriflex for Dogs and Cats," hereinafter Reference AX). Reference AX discloses a chewtab having 83.33 mg of glucosamine sulfate, 25 mg of ginger, and 25 mg of Bromelain. Under the standards of 35 U.S.C. § 102(b), however, Applicant respectfully asserts that References AW and AX are not "printed publications" available more than 1 year prior to the filing date of the present patent application. The only date on References AW and AX is "3/24/03," presumably the date on which the Examiner viewed and printed the web pages.[1] March 24, 2003 is not more than 1 year prior to the date of the filing of the present application (January 4, 2002). Applicant refers the Examiner to MPEP § 2128, which states that prior art disclosures on the Internet are considered to be publicly available as of the date the item

[1] Applicant respectfully notes that the Examiner cited these references in the parent case, U.S. Serial No. 10/039,246, where both references had the same date stamp of "3/24/03." Applicant included these references in the IDS filed on January 27, 2004 in the present case.

was publicly posted. MPEP § 2128 goes on to note that if the publication does not include a publication date (or retrieval date), it cannot be relied upon as prior art under 35 U.S.C. § 102(b). As the only date on References AW and AX is the retrieval date (March 24, 2003), which is not more than 1 year prior to the filing date of the present application, References AW and AX are not proper "printed publications" references under 35 U.S.C. § 102(b). See also Constant v. Advanced Micro-Devices, Inc., 848 F.2d 1560 (Fed. Cir. 1988) (holding that "[t]he statutory phrase 'printed publication' has been interpreted to mean that before the critical date the reference must have been sufficiently accessible to the public interested in the art; dissemination and public accessibility are the keys to the legal determination whether a prior art reference was 'published'.")

Applicant notes that the Examiner conducted, *sua sponte*, interviews with the following two manufacturers of nutritional supplements:

(1) Dr. Gooberman on March 25, 2003, with regard to Reference U (the "Gooberman interview" hereinafter); and

(2) Dr. Craig Kisciras of RxVitamins™ on March 26, 2003 with regard to Reference V (the "Kisciras interview" hereinafter).[2]

With respect to the Gooberman interview, the Examiner stated in the Interview Summary (PTO-413) and Office Action that Gooberman stated that the "Ultimate Joint Repair Formula" had been "publicly available for sale for over 4 to 5 years." With respect to the Kisciras interview, the Examiner stated in the Interview Summary and Office Action that Kisciras stated that the "product has been publicly available and sold since 1997." As neither Reference AW nor Reference AX on its face indicates that the "Ultimate Joint Repair Formula" or "Nutriflex," respectively, had been available and sold for more than 1 year prior to the filing of the present application,[3] Applicant assumes that the Examiner is relying on the Gooberman and Kisciras interviews to allow References AW and AX to meet the "on-sale bar" or "public use"

[2] Again, Applicant respectfully notes that the interviews that the Examiner refers to were conducted for the parent case, U.S. Serial No. 10/039,246, as evidenced by their dates and their inclusion as references in the Office Action dated April 1, 2003 in the parent case.

[3] At no point do the cited web pages indicate a date of offering for sale of the "Ultimate Joint Repair Formula" or for "Nutriflex." The only date on both web pages supplied with the Office Action is "3/24/03."

requirements of 35 U.S.C. § 102(b). Applicant respectfully asserts, however, that the Gooberman and Kisciras interviews are both insufficient to meet the on-sale bar or public use requirements of 35 U.S.C. § 102(b).

Existence of a public use or on-sale bar is determined by reference to the *claimed* invention. Orthokinetics, Inc. v. Safety Travel Chairs, Inc., 806 F.2d 1565 (Fed. Cir. 1986) (emphasis in the original). MPEP § 706.02(c) states that "an applicant may make an admission, or submit evidence of sale of the invention or knowledge of the invention by others, or the examiner may have personal knowledge that the invention was sold by applicant or known by others in this country." (emphasis added). Applicant has at no point made any admission regarding sale or knowledge of the invention by others. In addition, at no point did the Examiner state that she had "personal knowledge" that the claimed invention was sold or known by others. The uncorroborated Gooberman and Kisciras interviews do not constitute "personal knowledge" of the Examiner regarding prior sale or use of the claimed invention. Moreover, Gooberman's and Kisciras' uncorroborated statements do not establish that "the *claimed* invention" was on-sale for more than 1 year prior to the filing date. Gooberman and Kisceras merely stated that their "products" had been available for sale for over 4 to 5 years[4] or since 1997,[5] respectively. Neither interviewee stated that his respective product had the same formulation as that disclosed in Reference AW or Reference AX during that earlier time period. Neither interviewee provided any nexus between the formulation sold at any earlier time point and that disclosed as of March 24, 2003. Indeed, neither the Examiner nor the interviewees provided any evidence of the exact formulation of the "Ultimate Joint Repair Formula" or "Nutriflex" as of more than 1 year prior to filing of the present application. Accordingly, Applicant respectfully asserts that the Gooberman and Kisciras interviews are insufficient to meet the on-sale bar or public use bar requirements of 35 U.S.C. § 102(b).

Even if Reference AW and Reference AX were proper § 102(b) references, neither Reference AX nor Reference AW discloses the presently claimed invention. A claim is anticipated under § 102(b) only if each and every limitation is disclosed in a single prior art

[4] See Gooberman Interview Summary.
[5] See Kisciras Interview Summary.

reference. Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 639 (Fed. Cir. 1989) and MPEP § 2131. Present claim 24, from which all of the remaining claims depend directly or indirectly, recites a method for reducing pain, inflammation, stiffness, or discomfort in a mammal, where the method includes administering a dietary supplement to the mammal in an amount effective to reduce the pain, inflammation, stiffness, or discomfort, wherein the dietary supplement comprises an aminosaccharide, a ginger component, and an enzyme and wherein the aminosaccharide is granulated glucosamine or a granulated glucosamine salt selected from the group consisting of glucosamine hydrochloride, glucosamine sulfate, glucosamine phosphate, glucosamine lactate, and glucosamine dodecanoate; wherein the dietary supplement is in the form of a tablet; and wherein about 40% to about 55% of the tablet by weight is the aminosaccharide. Neither Reference AW nor Reference AX teaches or suggests such a dietary supplement tablet. Reference AW discloses a capsule having 375 mg of glucosamine sulfate and 105 mg of a "proprietary blend" of bromelain, boswellia serrata extract (40%), tumeric, and ginger. Reference AX discloses a chewtab having 83.33 mg of glucosamine sulfate, 25 mg of ginger, and 25 mg of Bromelain. At no point do these references disclose a tablet containing about 40% to about 55% of a granulated glucosamine or granulated glucosamine salt.

Given the deficiencies of References AW and AX (and the corresponding Gooberman and Kisciras interviews) as indicated above, it is clear that neither reference anticipates the presently amended claims. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejections under 35 U.S.C. § 102(b).

Rejections under 35 U.S.C. § 103(a)

The Examiner rejected claims 24-28 under 35 U.S.C. § 103(a) as being unpatentable over Gooberman (Reference AW) in view of Sharma *et al.* (Reference U). As noted above, however, Reference AW is not a proper § 102(b) reference, and therefore may not be used to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a). Accordingly, Applicant respectfully asserts that the Examiner has not established a *prima facie* case of obviousness under 35 U.S.C. § 103(a) and requests the withdrawal of the rejections under 35 U.S.C. § 103(a).

Even if Reference AW was a proper reference, however, the combination of cited references fail to teach or suggest the presently claimed methods. Proper analysis under § 103 requires consideration of two factors: (1) whether the prior art would have suggested to those of ordinary skill in the art that they should make the claimed composition, and (2) whether the prior art would also have revealed that in so making, those of ordinary skill would have had a reasonable expectation of success. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). None of the cited references, either alone or in combination, teach or suggest the presently claimed method. Reference AW discloses use of a capsule having 375 mg of glucosamine sulfate and 105 mg of a "proprietary blend" of bromelain, boswellia serrata extract (40%), tumeric, and ginger. Reference U discloses the effect of ginger oil on rats with chronic adjuvant arthritis. None of the cited references, however, teaches or suggests use of a tablet having an enzyme component, a ginger component, and about 40% to about 55% by weight of a granulated glucosamine or granulated glucosamine salt, as is required by the presently amended claims. At no point does the combination of the cited references suggest that a person having ordinary skill in the art should make or use a tablet having about 40% to about 55% by weight of a granulated glucosamine or granulated glucosamine salt, a ginger component, and an enzyme component. Accordingly, the claims are not obvious. Applicant respectfully requests withdrawal of the rejections under 35 U.S.C. § 103(a).

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CONCLUSION

Given all of the above, Applicant respectfully requests reconsideration and allowance of the pending claims. The Examiner is invited to call the under-signed attorney if such would expedite prosecution.

No fees are believed to be due at this time. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: 2/2/06

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